

FCC MAIL SECTION

Federal Communications Commission

DA 99-2272

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Before the

Federal Communications Commission

Washington, D.C. 20554

DISPATCHED BY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	
FM Broadcast Stations.)	
(Jersey Shore, Mill Hall, and)	MM Docket No. 99-312
Pleasant Gap, Pennsylvania))	RM-9735
)	
)	
(Greenwood and Mauldin,)	
South Carolina))	MM Docket No. 99-313 ✓
)	RM-9753
)	
(Metropolis, Illinois and)	
Paducah, Kentucky))	MM Docket No. 99-314
)	RM-9754

NOTICE OF PROPOSED RULE MAKING**Adopted: October 13, 1999;****Released: October 22, 1999****Comment Date: December 13, 1999****Reply Comment Date: December 28, 1999**

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a multiple docket Notice of Proposed Rule Making setting forth three separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules to specify a new community of license. Each petitioner has stated that it will apply for its requested channel, if allotted to the specified community. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. Each proposal is filed in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). Moreover, each proponent contends that its proposal would result in a preferential arrangement of allotments consistent with the

FM allotment priorities set forth in the Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 91 (1982).¹

3. This is a multiple docket Notice of Proposed Rule Making issued in response to a Commission Public Notice released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single Notice of Proposed Rule Making. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the Public Notice, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

A. MM Docket No. 99-312; RM-9735

Petitioner: Forever Broadcasting, LLC

c/o Allan G. Moskowitz, Esq.
Kaye, Scholer, Fierman, Hays & Handler, LLP
901 15th Street, N.W., Suite 1100
Washington, D.C. 20005

Proposal: Reallot Channel 249A from Jersey Shore to Mill Hall, Pennsylvania, and modify Station WVRT(FM)'s license accordingly; and reallot Channel 254A from Mill Hall to Pleasant Gap, Pennsylvania, and modify Station WZRZ(FM)'s license accordingly.² The reallotment of Channel 254A would provide Pleasant Gap with its first local aural transmission; and the reallotment of Channel 249A to Mill Hall would allow Mill Hall to retain a first local aural transmission service. Neither reallotment would result in the removal of a sole local service, since petitioner is proposing herein to allot Channel 249A to Mill Hall, Pennsylvania, and Stations WJSA-FM and WJSA(AM) would remain licensed to Jersey Shore, Pennsylvania. Since Stations WVRT(FM) and WZRZ(FM) seek to change their transmitter sites, petitioner is requested to provide gain and loss area studies. The proposed reallotments are not located in or near an urbanized area, therefore, a Tuck analysis is not applicable.³

¹The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3).]

²In support of the Pleasant Gap allotment, petitioner states that the community is a Census Designated Place with a 1990 U.S. Census population of 1,699 persons and is located in Spring township, which is part of Centre County. Pleasant Gap has an elementary school, a volunteer fire department, a post office, a number of local businesses, restaurants, gas stations, banks, and churches.

³See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995); Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

However, petitioner is requested to provide information as to the overall public interest benefits that would be derived by the proposed reallocations.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Jersey Shore, Pennsylvania	242B1, 249A	242B1
Mill Hall, Pennsylvania	254A	249A
Pleasant Gap, Pennsylvania	---	254A

Coordinates: The coordinates for Channel 249A at Mill Hall are 41-08-03 NL and 77-28-09 WL. The coordinates for Channel 254A at Pleasant Gap are 40-55-58 NL and 77-45-40 WL.

Additional Information: As requested, we propose to modify Station WZRZ(FM)'s license to specify operation on Channel 249A at Mill Hall, Pennsylvania, as its new community of license. Likewise, we propose to modify Station WVRT(FM)'s license to specify operation on Channel 254A at Pleasant Gap, Pennsylvania, as its new community of license. Since Mill Hall and Pleasant Gap are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 249A at Mill Hall, Pennsylvania, or for Channel 254A at Pleasant Gap, Pennsylvania.

FCC Contact: Sharon P. McDonald (202) 418-2180

B. MM Docket No. 99-313; RM-9753

Petitioner: Sutton Radiocasting Corporation

c/o Robert Lewis Thompson, Esq.
Taylor, Thiemann & Aitken, L.C.
908 King Street, Suite 300
Alexandria, Virginia 22314

Proposal: Reallot Channel 244A from Greenwood to Mauldin, South Carolina, as the community's first local aural transmission service, and modify Station WCRS-FM's license accordingly.⁴ Petitioner

⁴In support of its proposal, petitioner states that Mauldin is an incorporated community with a 1990 US. Census population of nearly 12,000--up 41% from the 1980 Census. It has a mayor, city council, sewer department, police and fire departments, and a city library. Mauldin also has local churches, commercial shops, real estate agents,

asserts that the reallocation would not result in the removal of Greenwood's sole local service, whereas Stations WLMA(AM), and WMTY(AM/FM) would remain licensed to the community. Since Station WCRS-FM seeks to change its transmitter site, petitioner is requested to provide a gain and loss area study. Moreover, since the proposed reallocation of Channel 244A to Mauldin would provide a 70 dBu signal over only 26.7% of the Greenville, South Carolina Urbanized Area, a Tuck analysis is not applicable. However, petitioner is requested to provide information as to the overall public interest benefits that would be derived by the proposed reallocation.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Greenwood, South Carolina	244A, 278C3	278C3
Mauldin, South Carolina	---	244A

Coordinates: The coordinates for Channel 244A at Mauldin are 34-41-30 NL and 82-17-02 WL.

Additional Information: This allotment requires a site restriction of 10.7 kilometers (6.7 miles) south to avoid a short-spacing to the licensed site of Station WKKT(FM), Channel 245C, Statesville, North Carolina. As requested, we propose to modify Station WCRS-FM's license to specify operation on Channel 244A at Mauldin, South Carolina, as its new community of license. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 244A at Mauldin, South Carolina.

FCC Contact: Sharon P. McDonald (202) 418-2180

C. MM Docket No. 99-314; RM-9754

Petitioner: Sun Media, Inc.

c/o Dawn M. Sciarrino
Fisher, Wayland, Cooper, Leader, & Zaragoza, L.L.P.
2001 Pennsylvania Ave., N.W., Suite 400
Washington, D.C. 20006

Proposal: Reallot Channel 252C1 from Metropolis, Illinois to Paducah, Kentucky, as the community's third local FM transmission service, and modify Station WRIK-FM's construction permit accordingly.⁵

civic organizations and three local parks.

⁵In support of its proposal, petitioner states that the reallocation of Channel 252C1 to Paducah would not result in a first or second full-time aural service, or a first local service. However, petitioner asserts Paducah has a

Petitioner states that the reallocation of Channel 252C1 to Paducah, Kentucky, would not result in the removal of Metroplis' sole local service, whereas Stations WMOK(AM), WRIK(FM), and WREZ(FM) would remain licensed to Metropolis, Illinois. Moreover, since Station WRIK-FM does not seek to change its transmitter site, there will be no gain or loss areas. However, because the reallocation would fulfill FM allotment priority (4), other public interest matters, petitioner is requested to provide the overall public interest benefits that would be derived from the reallocation. Lastly, Paducah is not located in or near an urbanized area, thus, a Tuck analysis is not applicable.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Metropolis, Illinois	252C1, 288A	288A
Paducah, Kentucky	227C1, 145C1	227C1, 245C1, 252C1

Coordinates: The coordinates for Channel 252C1 at Paducah are 36-45-09 NL and 88-29-58 WL.

Additional Information: This allotment can be made at petitioner's authorized construction permit site without the imposition of a site restriction. As requested, we propose to modify Station WRIK-FM's construction permit to specify operation on Channel 252C1 at Paducah, Kentucky, as its new community of license. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 252C1 at Paducah, Kentucky.

FCC Contact: Sharon P. McDonald (202) 418-2180

4. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket Notice of Proposed Rule Making should reference only the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **December 13, 1999**, and reply comments on or before **December 28, 1999**, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

population of 27,256 persons, whereas Metroplis has only 6,734 persons, thus, the allotment should be granted to the larger community, citing Athens and Atlanta, Illinois 11 FCC Rcd 3445 (1996); and Blanchard, Louisiana and Stephens, Arkansas, 8 FCC Rcd 7083 (1993). Petitioner further asserts that both communities receive city grade coverage from eight full-time AM and FM reception services and are considered to be well-served.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

7. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall

be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W.; TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.